No. 11,553

IN THE

United States Circuit Court of Appeals

For the Ninth Circuit

BYRON W. WOOD,
Appellant,

vs.

PAUL GREIMANN,
Appellee.

BRIEF FOR APPELLEE.

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STATEMENT OF CASE.

This case originated from the Commissioner's Court, Fairbanks Precinct, Fourth Judicial Division, Alaska, which Court was sitting as a Court of Probate under the laws of Alaska.

Compiled Laws of Alaska, 1933, Sec. 4348, p. 847;

Lovskog v. American National Red Cross, 111 Fed. (2d) 88.

On March 6, 1945, at Fairbanks, Alaska, Appellee, Paul Greimann, was duly and regularly appointed as Administrator with Will Annexed of the Estate of J. M. Pearl, who died at Muskogee, Oklahoma, on July 8, 1944, while confined in a Veterans' Hospital. Pearl was then, and since 1923 had been, a resident

of the Fourth Judicial Division of Alaska, near Fairbanks, until his death.

The Appellant, Byron W. Wood, claiming to be a full brother of Pearl, resided at Council Hill, Oklahoma, and had never been in Alaska.

Appellant Wood filed an Amended Petition in said Probate Court on the day preceding the date set for the hearing on the Final Account of Greimann's administration of the estate of J. M. Pearl, deceased, claiming that the last will and testament theretofore admitted to probate in said Court was a contingent Will and not an absolute Will, asking for revocation of the Order admitting the Will to probate, removing Greimann as Administrator with the Will Annexed, objecting to the Final Account, and for relief in other respects, which are not here material (R. 10).

The said Probate Court, after due hearing upon Appellant's Amended Petition, held and decided that the Will was void, not being an absolute, but a contingent, Will, and therefore not entitled to probate, and denying said Amended Petition in all other respects (R. 35).

Thereupon Greimann, Appellee here, appealed from the Order of the Probate Court to the District Court of the Territory of Alaska, Fourth Judicial Division, as provided by the laws of Alaska (*Compiled Laws of Alaska, 1933,* Sec. 4571, p. 885).

Upon the appeal the District Court, by a Decree following a written opinion, reversed the Order and Judgment of the Probate Court and held that the

Will of Pearl was not contingent but absolute and was entitled to probate.

The Appellant, Byron W. Wood, now appeals to this Honorable Court to reverse the decree of the District Court of the Territory of Alaska, Fourth Division.

FACTS.

The deceased, J. M. Pearl, a veteran of the Spanish-American War, aged seventy-five years or over, died at Muskogee, Oklahoma, on July 8, 1944. He had gone there for medical attention and died in a Veterans' Hospital from paralysis with which he was stricken in the Summer of 1942. He had left Fairbanks at the suggestion of Greimann about November 1, 1941, he, Pearl, being then in ill health.

Pearl and Greimann came to Alaska from the State of Illinois in 1923. For three years prior they had lived and worked together in Illinois. In Fairbanks, Alaska, they opened a garage business as equal copartners under the name of Pearl & Pearl. This continued until sometime in 1930 when Pearl withdrew from the business and settled down in the real estate business about one and one-half miles from Fairbanks. He sold lots upon a tract of land of three hundred twenty acres, which Greimann had acquired for both, and which was equally divided at the time of their partnership dissolution. Greimann carried on the garage business, and does now.

Their acquaintance and friendship continued unbroken until the death of Pearl in 1944, which is somewhat unusual in a frontier country.

On September 26, 1931, Pearl was under treatment in a Veterans' Hospital in Washington, D. C., and he wrote a letter to Greimann, Appellee, addressing him as "Dear (Boy) Paul" and signing same as "Dad J. M. Pearl". This letter, and the envelope in which the same was mailed, is in the hardwriting of Pearl, and a copy thereof in full is found on pages 4 to 7 of the Transcript of Record under the heading "Appellant's Exhibit A".

The essential portion of this letter constituting the foundation of the claim and contention of Appellee is the paragraph at the bottom of page 5 and continuing to the top of page 6 of the Record, which reads as follows:

> "We have to give reference as nearest of kin to be notified in case of death. I gave you my boy, and in case I die if they do operate I bequeath you my belongings and property all except $100 to be given to Robert Gallagher to help him in his education. I would ask to be buried here in Arlington Cemetery. I do not expect to die but to be on my way home by the 20th of Oct. or soon after as they are going right after my case properly."

As shown by the Decree rendered by the District Court (R. 44-46), no evidence whatever was offered or introduced by the Appellant here, Byron W. Wood, showing, or tending to show, the truth of any of the

allegations contained in his Amended Petition filed in the Probate Court. On that point the Decree entered by the District Court (R. 44) recites as follows:

> "Appellant presented certain oral and documentary testimony and evidence and rested, and petitioner Byron W. Wood, as appellee, offered none."

PLEADINGS AND PROOF ON APPEAL TO DISTRICT COURT.

The proof, therefore, in the District Court rested solely upon the Will of Pearl and the testimony of Greimann. At the close of the case before the above named Court, the testimony of Greimann remained unchallenged and wholly uncontradicted. His testimony sustained all the allegations of the Answer filed by Greimann in the Probate Court, which is found on pages 29 to 33 inclusive of the Transcript of Record.

While no separate formal Findings of Fact or Conclusions were entered in the case in the District Court, the filed Opinion of that Court alludes to and decides all the essential facts necessary upon which the Court's decision is based.

In the opinion of the learned Trial Court, the main issue passed upon was the validity or invalidity of the Will of Pearl as contained in the letter of Pearl to Greimann dated September 27, 1931, from Washington, D. C. On that question the District Court ruled against the contention of Petitioner Wood and ordered that the Will be admitted to probate as the Last Will and Testament of Pearl.

ARGUMENT.

In the Brief for Appellant (p. 22) under the heading "Points and Authorities" etc., referring to the contents of the letter from Pearl to Greimann dated September 26, 1931, from the Washington, D. C., hospital, it is stated:

> "* * * said letter specifically detailed Pearl's afflictions and treatment *and advised that an operation was impending,* and with regard to the said crisis said Pearl wrote said Greimann: 'in case I die if they do operate I bequeath you my belongings and property all except $100 to be given to Robert Gallagher to help him in his education. I would ask to be buried in Arlington Cemetery. I do not expect to die but to be on my way home by the 20th of Oct. or soon after as they are going right after my case properly'; that said bequests and requests were contingent and conditioned upon the death of the said Pearl resulting from *said impending operation;* * * *."

It is also, on page 22 of said Brief, in the last four lines of the first paragraph, stated:

> "The urge for writing the letter *was the impending operation* and the language used specifically expressed conditions precedent to its operation. These conditions or events did not occur and the letter never became effective as a will."

Thereafter in the Brief reference is made in the same way to some supposed "impending operation" or "immediate operation" or "planned immediate operation".

The record as a whole and the letter as a whole makes no mention of any kind of operation being planned, impending, or immediate when Pearl penned said letter, nor did Pearl in said letter advise Greimann that his doctors had ever suggested the possibility of an operation. If his physicians had done so, Pearl would undoubtedly have commented on it in detail to Greimann.

It would appear to a reasonable mind that the words "in case I die" were suggested by the fact that Pearl had recently been asked by the hospital authorities "to give reference as nearest of kin to be notified in case of death". Those words are commonplace and express no contingency. It would also appear that the words "if they do operate" were words that flashed into his mind as he wrote and have no special significance. It is apparent that Pearl, as he wrote, suddenly thought of an operation and stated that, on the spur of the moment as the only factor which might cause his death.

His reason for the use of these words "in case I die if they do operate" was to indicate the inducement or circumstances of self-justification for then making a testamentary disposition of his property and were in no sense used by him to express a condition or contingency. They are mere words of inducement aroused by the suggestion of death, and in no sense express a condition or contingency.

> "We have to give reference as nearest of kin to be notified in case of death. I gave you my boy * * *."

Death was the foremost idea in his mind, and it was not "death" limited and circumscribed by the idea of death merely from an operation, which had never been hinted at by anybody or recommended, so far as the record shows.

Later on he says, "I do not expect to die", without confining this expression to the idea of death from an operation. He believed he would not die from any cause whatsoever but would be on his "way home by the 20th of Oct."

We base our case upon the foregoing analysis of the language used. And, in this connection, we wish to forcibly point out to this Court that, although on page 20 of Appellant's Brief, in the last two lines, it is stated:

> " * * * it is obvious that a thorough and careful study and analysis of said language of the letter ranks first."

The Brief fails to disclose any attempt to study or to analyze the language of the letter in question.

In the first paragraph on page 21 of Appellant's Brief, it is stated, mistakenly perhaps, that:

> "The letter set forth at length * * * *the necessity for the performance of the operation,* * * *."

On the contrary, the letter referred to states nothing whatever about that subject. There was no such necessity mentioned in the letter whatever, and the only conclusion that can be justly arrived at is that such a statement is intended to mislead.

This affront to the Court's intelligence might be overlooked in a single instance were it not for the fact that in Appellant's Brief the supposed "operation" referred to is described variously as "impending", "immediate", "planned" (pages 19, 20, 21, 22, 23).

Not a word in the record or in the letter which is the subject of interpretation and construction justifies or warrants such description and the so-called "operation" is a complete myth so far as the record shows.

While on this subject, I may be permitted to call the Court's attention to other instances of this nature.

In said first paragraph on page 21, line 5, of Appellant's Brief, the writer says the letter was written "at the time an operation was planned and impending", and. on page 20, line 8, it is stated that the bequest was conditional upon Pearl's death "resulting from the said impending operation".

On page 19, second line from bottom, it is said "an immediate operation on said Pearl was planned".

On page 22, "advised that an operation was impending".

On page 23, line 6, "resulting from said impending operation", and twice more on said page, lines 4 and 2 from the bottom, "the impending operation" and "said planned immediate operation".

And again on page 63, lines 8 and 12, it is said "just before a planned operation on its author" and "and the author does not undergo the planned operation".

These absurd repetitions convince that it is not desired by the Brief of Appellant to adhere to the undisputed facts and that it attempts to convey a wholly different and entirely wrong impression from the facts in evidence.

Reiteration, continuous, of an erroneous statement seldom compels acceptance.

Pearl did "not expect to die". He merely used the words "if they do operate" to indicate that he believed in case he died his death might result from some operation if one were performed, but not otherwise.

The tone and language of the letter as a whole displays the genial and talkative nature of Pearl and that he was enjoying the role of benefactor to his "dear (Boy) Paul" whom he regarded as his "nearest of kin".

Pearl allowed this Will to stand for thirteen years and until his death, and why should the Court do now what he failed to do in his lifetime?

AUTHORITIES.

In his work "The American Law of Administration", Third Edition, Woerner, at pages 70 and 71, speaking of conditional and contingent Wills, adds:

> "The conditional or contingent character must appear from the Will itself, not from extrinsic evidence. In such case it is important to ascertain, first, whether the intention of the testator is to make the validity of the Will dependent upon

the condition, or merely to state the circumstances inducing him to make the testamentary provision. * * *"

The author then refers to the case of *French v. French,* 14 W. Va. 458 (to which case we do not have access), and continues as follows:

"The case of French v. French presents some instructive features on this question, and may with profit be noticed *in extenso.* The will was a holograph, in the following form: 'Let all men know hereby, if I get drowned this morning, March 7, 1872, that I bequeath all my property, personal and real, to my beloved wife, Florence. Witness my hand and seal, 7th of March, 1872. Wm. T. French.' It was proved, on the propounding of the will, that French was about to cross a deep river; that his wife, being afraid that some accident would happen, was anxious that he should not go; that decedent started out of the room, and then came back and wrote the will. * * * It also appeared in the cause * * * that he was not drowned on the day of writing the will, but died on the 29th of December, 1874 * * *. Upon these facts the majority of the court, after an extensive review of English and American authorities bearing upon the question of contingent wills, reached the conclusion that 'it was the intention and purpose of the decedent that said paper writing should be his unconditional will and testament, giving to his wife Florence all of his real and personal estate at his death, whether natural or otherwise * * *.' * * * The president of the court dissented, holding it to be self-evident that the words of the will, *'if* I get drowned', etc., could not possibly mean *'as I may* get drowned', etc.

> Four of the five judges concurred in the majority opinion, rendered by Haymon, Jr. *This inclination of the courts not to regard a will as conditional where it can be reasonably held that the testator was merely expressing his inducement to make it, although his language if strictly construed would express a condition,* is forcibly illustrated in the recent case of Eaton v. Brown, where the U. S. Supreme Court unanimously held an instrument, written by one not highly educated, to be an absolute and not a conditional will, which was couched in the following language: 'I am going on a Journey & may, not ever return. And if I do not, this is my last request.' The Court laid some stress on the permanent nature of the bequest contained in it. Although the testator safely returned from the contemplated journey the court upheld the will."

We consider this expression of this renowned author sustains our contention fully.

In the case of *Eaton v. Brown,* 193 U. S. 411, the late Mr. Justice Holmes wrote the opinion, unanimously approved, and sustained the writing in that case as a permanent and absolute Will. The Court further held that "the primary import of isolated words may be held to be modified and controlled by the *dominant intention* to be gathered from the instrument as a whole."

We find a long list of cases in which this decision of the United States Supreme Court in the case of *Eaton v. Brown,* supra, has been referred to, and we desire to call attention particularly to the case of *In*

re Boutelle's Estate, 15 N. W. (2d) 506, in which the Supreme Court of Minnesota, in 1944, states as follows (bottom of page 509):

> "One of the highest duties resting upon a Court is to carry out the intentions of a testator expressed in valid provisions not repugnant to well settled principles of public policy. * * * What is sought is not the meaning of the words alone, or the meaning of the writer alone, but the meaning of the words as used by the writer. * * * It is the *dominant intention* to be gathered from the instrument as a whole, not isolated words, that should guide us. And we are required to place a reasonable and sensible construction upon the language used. Hence canons of construction are only aids for ascertaining testamentary intent which are to be followed only so far as they accomplish that end."

It must be noted that, in the case of *Eaton v. Brown,* supra, the late Mr. Justice Holmes, speaking for the Court, states:

> "The latest English decisions which we have seen qualify the tendency of some of the earlier ones."

and he cites a number of cases which he states strongly favor the view which we adopt, among which cases is *French v. French,* 14 W. Va. 458 (502), which is pointed out in the quotation above given from Woerner's "The American Law of Administration," 3rd Ed., Vol. 1, page 70.

In the case of *Barber v. Barber* (Ill.), 13 N. E. (2d) 257, syllabus 9 reads:

> "If the language used in a Will can reasonably be construed to mean that the testator refers to a possible danger or threatened calamity only as a reason for making a Will at the time rather than as a condition precedent to the Will becoming operative, such construction should prevail and the Will be construed as not 'conditional' ".

If the Appellant finds any comfort in these judicial pronouncements, we confess to an inability to understand simple and clear language.

From the language of the letter here in question, no other conclusion can be reached than that the "dominant intention" of the writer, Pearl, was to make a permanent and absolute disposition of all his belongings and property to his "nearest of kin," unhampered by any strings except for the bequest of $100.00 to young Gallagher to aid him in his education.

Page on "Wills", Lifetime Edition, Vol. 1, Sec. 96, pages 209-210, announces the following principle:

> "There is quite a strong tendency to treat such provisions, where possible, as descriptive of the motives which induced testator to make his Will and not as conditions upon which the validity of the Will depends. Such a Will is sometimes called a 'permanent' Will."

We respectfully call this Court's attention to our law on the subject of determining the testator's intention, as follows:

> "Sec. 4639. Construction of Wills: Testator's Intention to Be Carried Out. All Courts and

> others concerned in the execution of last wills shall have due regard to the directions of the will and the true intent and meaning of the testator in all matters brought before them." (Compiled Laws of Alaska, 1933, at page 892).

The Trial Court, in its opinion, supports its decision in part by citing *In re Tinsley's Will,* 174 N. W. 4. The Brief of Appellant generously concedes what is therein claimed to be "obvious" but contends that the Tinsley decision has, nevertheless, no application in this controversy. Our minds fail to grasp this contention but we assert with confidence that this Court will appreciate its significance in determining what is meant by the language used by Pearl taken in connection with all the circumstances existing at the time of writing, as disclosed by the document itself.

In the case of *Barber v. Barber,* supra, we find Appellant's Brief claiming that the Court in that case upholds his contention throughout and is against the claims of Appellee. We must suggest that the Trial Court, whose decree is now sought by Appellant to be set aside and annulled, should be extended some credit for intelligence and judgment, otherwise that court would not have rested its decision upholding the Will of Pearl partly upon the strength of *Barber v. Barber.*

Appellant's Brief makes a similar claim as to the cases of *Watkins et al. v. Watkins Admr.,* 106 S. W. (2d) 975; also *In re Forquer's Estate,* 66 Atl. 92; also *Ferguson v. Ferguson,* 45 S. W. (2d) 1096.

In the *Ferguson* case last mentioned, the Court states:

> "To hold a Will contingent, it must reasonably appear that the testator affirmatively intended the Will not to take effect unless the given contingency did or did not happen, as the case might be."

The only other case not criticized adversely or explained away as authority against Appellee and in favor of Appellant is: In *Succession of Gurganus,* decided in 1944, 20 So. (2d) 296, holding that the Will in question there was not contingent. That Will, made in 1924, endured until the death of testator in 1943. Undoubtedly Appellant overlooked this *Gurganus* case purposely. It flatly contradicts and overthrows his contentions in this case.

The Court in deciding this *Gurganus* case referred to the fact:

> "* * * the testatrix never revoked the Will during the long period of years elapsing between its writing and her death. This is an additional reason why the Will was never intended to be conditional. We are supported in our views by the cases of National Bank of Commerce of Charleston vs. Wehrle, 124 W. Va. 268, 20 S. E. (2) 112; Lafayette V. Eaton vs. Harrison H. Brown, 193 U. S. 411, 24 S. Ct. 487, 48 L. Ed. 730; and Watkins vs. Watkins Admr., 269 Ky. 246, 106 S. W. (2) 975, and authorities therein cited."

We have now mentioned or adverted to the majority of the cases cited in the decree rendered herein

by the Trial Court as shown by the written Opinion filed by the Trial Judge on October 14, 1946, except the case of *McMerriman v. Schiel et al.* (Ohio), 140 N. E. 600. Speaking from this later case, the Trial Court quotes as follows from the Ohio Court's opinion:

> "* * * In the absence of any declaration in the former decisions of this court, and in view of the irreconcilable conflict among the decisions of other states, and among the English cases, we are disposed to accept as entitled to most value the declarations of the Supreme Court of the United States. * * *"

We submit that the Trial Court in the case at bar could not have been mistaken in its interpretation with reference to the proper meaning of the authorities relied upon to sustain its decree.

Appellant's Brief bristles with authorities but nowhere does it appear therefrom that the case of *Eaton v. Brown,* supra, decided by the Supreme Court of the United States, has been modified or overruled. On the other hand, the opinion written by the late Mr. Justice Holmes has been quoted, cited, and followed by every Court dealing with this subject.

A late case which arose in Pennsylvania, namely, *In re Kayser's Estate,* 38 Berks 205 (Pa. Orph.), to which reports we have no access, recites that the Will made by the testator began as follows:

> "September 15 '45. In case something should happen to me before I have a chance to see Mr. Trexler, this is my last will & testament. * * *"

One of the questions before the Court required the Court to decide whether the will was contingent or not. The evidence showed that after the writing of the will, decedent had been in conference with Mr. Trexler, who was her attorney. The Court held that the will was non-contingent.

Our position in this case rests upon *Eaton v. Brown,* supra, and all the supporting authorities since that opinion was written, and we can not depart from its ruling that the "dominant intention" of the testator must be ascertained from the whole instrument, and given proper effect by the courts.

Another case not hereinbefore cited which strongly supports the position of Appellee is *In re Moore's Estate,* 2 Atl. (2d) 761.

APPELLANT WOOD WAS NOT ENTITLED TO INVOKE AID OF PROBATE COURT.

In the Probate Court, Appellee filed a motion to dismiss the Amended Petition of the Appellant here (R. 19), and also filed a Demurrer on similar grounds (R. 22). We raised the question, adversely decided by the Probate Court, that the petitioner, Wood, had no standing in the Probate Court, as shown by his Amended Petition. He was not an heir, legatee, devisee, creditor, or other person interested in the estate, as the law requires.

As we have heretofore pointed out in our Statement of Facts, Appellant filed his Amended Petition in the Probate Court on the day preceding the day appointed

for the hearing upon the Final Account of Greimann as Administrator with Will Annexed of Pearl's Estate and his Petition for distribution of said estate. Appellant used Greimann's Petition for approval of his final account and for distribution of said estate as a guise for contesting the validity of Pearl's Will and as a lever for getting into Court. In no view can Appellant Wood claim authority for this procedure as our law specifically provides who may file objections to a final account of an Administrator, the section of our statute being as follows:

> "Sec. 4467. Objections to final account, by whom and when made. An heir, creditor, or other person interested in the estate, may, on or before the day appointed for such hearing and settlement, file his objections thereto, or to any particular item thereof, specifying the particulars of such objections; * * *." (Compiled Laws of Alaska, 1933, p. 868).

Appellant also asked the Court to remove Greimann as Administrator. He was not entitled to ask for such relief, the section of our statute on this subject being as follows:

> "Sec. 4371. Heir may apply for removal of executor or administrator. Any heir, legatee, devisee, creditor, or other person interested in the estate may apply for the removal of an executor or administrator * * *." (Compiled Laws of Alaska, 1933, p. 852).

If, as stated in Appellant's Amended Petition, Pearl was survived by a wife, she, in the event Pearl had died intestate, would have been his sole heir, and

Wood could not qualify as a person having any interest in the estate as required by law. Secs. 4651 and 4652, Compiled Laws of Alaska, 1933, pp. 893, 894.

The Trial Court ignored this question of jurisdiction in his Opinion and decided the case on its merits, disregarding technicalities in pleadings. If we have now a right to do so, we direct the attention of this Court to that question. We believe we have such right as it raises the question of jurisdiction. The petitioner Wood had no standing in law to interrupt the orderly course of proceedings in the Probate Court. We insist that Appellant Wood, by his own assertions that Pearl was married at the time of death (although no evidence on this subject was produced before the Trial Court, and no such person has ever asserted any right in this proceeding), placed himself outside the classes of persons authorized by law to object to the Final Account of Greimann as Administrator, or to claim any portion of Pearl's estate, or to contest the validity of Pearl's Will, or to seek the relief prayed for in his Amended Petition.

We therefore insist that, having no authority to institute this suit in the Probate Court in the first place, he is a mere interloper and has no authority now to maintain such suit or this appeal.

NO BILL OF EXCEPTIONS.

Furthermore, the transcript in this case is so irregular, confusing, incorrect, and incomplete as to justify

a motion to strike the same from the record, but we have refrained from such course of action lest we deceive ourselves by so doing.

Appellant has carried on this appeal in an *ex parte* manner and has failed to serve on Appellee's Attorney of record any of the essential appeal papers, except the Notice of Appeal (R. 46-48).

Appellant has further failed to secure the signature of the Trial Judge to the proposed Bill of Exceptions within the time allowed by law or any valid extension, all in gross violation of law and the Rules of the Trial Court and of this Court.

On the question of rules to be observed regarding time of settling and filing Bills of Exception, we cite the following:

Buckley v. Verhonic, 82 Fed. (2d) 730;
McDonald v. Harding, 57 Fed. (2d) 119;
Walton v. Southern Pac. Co., 53 Fed. (2d) 63-68;
Dalton v. Hazelett, 182 Fed. 561;
Dalton v. Gunnison, 165 Fed. 873-876;
National Veneer Co. v. Langley, 29 Fed. (2d) 403;
O'Brien's Manual, p. 146.

Whatever action, if any, this Court may take in view of the two subjects last referred to its attention, as stated by the Court in the *Walton* case above mentioned, the Appellant can not complain as he is the "author of his own misfortune."

CONCLUSION.

We again refer to the following aspects of this last will and testament of Pearl in favor of its acceptance and its validity, apparent on its face:

(a) He was acting under apprehension of death generated by the requests made of him by the hospital authorities.

(b) Greimann, the main recipient of his bounty, was regarded as his "nearest of kin."

(c) He, Pearl, was not afraid that he would die, his words being: "I do not expect to die", without suggesting any cause whatever and thereby implying death resulting from all causes.

(d) Greimann was Pearl's solid friend of years' standing and for whom and his "babes" Pearl had strong, unwavering affection.

(e) Pearl had thirteen years to reconsider his action and did not revoke, during that period, nor did he intimate or suggest in his Will that it was merely to be temporary and not permanent.

The law does not favor intestacy and the general rule is that, as found stated in syllabus 3 of *In re Langer's Estate,* 281 N. Y. S. 866:

> "Courts do not incline to regard a will as conditional where it reasonably can be held that the testator was merely expressing his inducement to make it although the language, if strictly construed, would express a condition."

And, in syllabus 5 of the same case, it is further said:

> "General rule is that mere matters of inducement though phrased conditionally do not constitute a condition which requires the rejection of a will."

Finally, we respectfully refer this Honorable Court to the case of *National Bank of Commerce etc. v. Wehrle,* 20 S. E. (2d), 112 to 115, where the case of *French v. French,* supra, is referred to and quoted with approval.

We submit that the decree of the District Court of Alaska should be affirmed as the established law, that the appellant Wood has no standing in this Court, and that the Will of Pearl is an absolute and permanent Will and entitled to probate as such.

Dated, Fairbanks, Alaska,
November 14, 1947.

Respectfully submitted,
CECIL H. CLEGG,
Attorney for Appellee.